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10 SHAPIRO

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 DAVID A. GLAZER, an individual,

14 Plaintiff,

15 vs.

16 CHENEY ADRIENNE SHAPIRO; CHENEY
17 SHAPIRO DESIGNS 401K; CHENEY SHAPIRO
18 DESIGNS; CHENEY ADRIENNE SHAPIRO,
19 TRUSTEE OF DEFENDANT CHENEY SHAPIRO
20 DESIGNS 401K; RESOURCEFUL
21 DEVELOPMENTS, INC.; RICHARD JUDSON
22 WILLIAMS; SILVERWOOD PROPERTIES, INC.;
23 KENNETH HOWARD SHAPIRO; PODLEY
24 ASSOCIATES REALTORS; LINDA
25 DARLINGTON SEYFFERT; SEISMIC SAFETY,
26 INC.; EDUMUND J. SYLVIS; KEN LAMARR
27 COMPTON; AND DOES 2 THROUGH 250.

28 Defendants.

Case No.: BC669741

Complaint Filed: July 25, 2017

Assigned to Honorable Richard E. Rico
Dept.: 17

**ANSWER OF DEFENDANTS
SILVERWOOD PROPERTIES, INC.
AND KENNETH HOWARD SHAPIRO
TO THE FIRST AMENDED
COMPLAINT OF PLAINTIFF DAVID A.
GLAZER**

Defendants SILVERWOOD PROPERTIES, INC. and KENNETH HOWARD SHAPIRO
(collectively the "Answering Defendants"), for themselves only, file their Answer to the First
Amended Complaint ("FAC") filed by Plaintiff DAVID A. GLAZER (hereinafter "Plaintiff") as
follows:

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FILED
Superior Court of California
County of Los Angeles

NOV 16 2017

Sherri B. Carter, Executive Officer/Clerk
By Marlon Gomez Deputy

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 *(Third Party Negligence)*

3 4. As a fourth and separate affirmative defense to each cause of action asserted against
4 them, these Answering Defendants allege that third parties were careless and negligent in and about
5 the matters alleged in the FAC, and that said carelessness and negligence on the part of said third
6 parties proximately contributed to the happening of the accident and to Plaintiff's injuries, loss
7 and/or damage, if any, allegedly sustained. Therefore, any damages awarded to Plaintiff shall be
8 diminished in proportion to the amount of fault attributed to said third parties.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 *(Laches)*

11 5. As a fifth and separate affirmative defense to each cause of action asserted against
12 them, these Answering Defendants allege that the FAC on file herein is barred by reason of
13 Plaintiff's laches in that Plaintiff waited an unreasonable period of time to bring his FAC, to the
14 detriment of these Answering Defendants.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 *(Unclean Hands)*

17 6. As a sixth and separate affirmative defense to each cause of action asserted against
18 them, these Answering Defendants allege that Plaintiff is barred by reason of Plaintiff's coming into
19 court with unclean hands.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 *(Waived Right to Relief Sought)*

22 7. As a seventh and separate affirmative defense to each cause of action asserted against
23 them, these Answering Defendants allege that Plaintiff has waived his rights to the relief sought in
24 the FAC against these Answering Defendants by virtue of its acts, conduct, representations and
25 omissions.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 *(Mitigate Damages)*

3 8. As a eighth and separate affirmative defense to each and every cause of action
4 asserted against them, these Answering Defendants allege that Plaintiff could have, by the exercise
5 of reasonable diligence, limited or prevented his damages, if any, as a result of the actions alleged in
6 the FAC and that Plaintiff has failed or refused to do so. Such failures or refusals on the part of
7 Plaintiff constitute failure to mitigate his damages.

8 **NINTH AFFIRMATIVE DEFENSE**

9 *(Acts of Fictitiously Named Defendants)*

10 9. As a ninth and separate affirmative defense to each cause of action asserted against
11 them, these Answering Defendants are informed and believe and thereon allege that they are not
12 legally responsible for the acts and/or omissions of those defendants fictitiously named herein as
13 DOES.

14 **TENTH AFFIRMATIVE DEFENSE**

15 *(Intervening, Supervening and Superseding Causes)*

16 10. As an tenth and separate affirmative defense to each cause of action asserted against
17 them, these Answering Defendants are informed and believe and thereon allege that the injuries and
18 damages of which the Plaintiff complains were proximately caused or contributed to by the acts of
19 other defendants, persons and/or entities. Said acts were in intervening, supervening and
20 superseding a cause of the injuries and damages, if any, of which the Plaintiff complains, thus
21 barring Plaintiff from any recovery against these Answering Defendants.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 *(Estoppel)*

24 11. As a eleventh and separate affirmative defense to each cause of action asserted
25 against them, these Answering Defendants are informed and believe, and thereon allege, that
26 Plaintiff has engaged in conduct with respect to the activities and/or premium which are the subject
27 of the FAC, and by reason of said activities and conduct, is estopped from asserting any claim for
28 damages or seeking any other relief against these Answering Defendants.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 *(Damages Caused by Acts or Omissions Beyond Answering Defendants' Control)*

3 12. As a twelfth and separate affirmative defense to each cause of action asserted against
4 them, these Answering Defendants are informed and believe, and thereon allege, that the damages
5 sustained by Plaintiff, if any, were proximately caused by the acts, omissions, negligence, fraud,
6 and/or breach of obligations by persons other than these Answering Defendants and beyond these
7 Answering Defendants' supervision and control.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 *(Standard of Care Met)*

10 13. As a thirteenth and separate affirmative defense to each cause of action asserted
11 against them, these Answering Defendants are informed and believe, and thereon allege, that in all
12 aspects these Answering Defendants met the applicable standard of care regarding Plaintiff.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 *(Active Negligence of Plaintiff)*

15 14. As a fourteenth and separate affirmative defense to each cause of action asserted
16 against them, these Answering Defendants are informed and believe, and thereon allege that the
17 damages sustained or to be sustained by Plaintiff, if any, were proximately caused or contributed to
18 by the active negligence of Plaintiff in that he personally participated in a negligent act or omission
19 that brought about the injuries or damages of which he is now complaining. Consequently, neither
20 the law nor any agreement entitles Plaintiff to an indemnity.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 *(Non-Economic Damages)*

23 15. As a fifteenth and separate affirmative defense to each cause of action asserted
24 against them, these Answering Defendants' liability for non-economic damages, if any, is limited to
25 that percentage of those damages which are in direct proportion of these Answering Defendants'
26 percentage of fault in accordance with Civil Code section 431.2(a).

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1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 *(Lack of Privity)*

3 16. As a sixteenth and separate affirmative defense to each cause of action asserted
4 against them, these Answering Defendants were not parties to the original agreement which forms
5 the basis of Plaintiff's FAC and, therefore, Plaintiff lacks the required privity to raise the claims
6 alleged.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 *(Lack of Justifiable Reliance)*

9 17. As a seventeenth and separate affirmative defense to each cause of action asserted
10 against them, these Answering Defendants are informed and believe, and thereon allege, that
11 Plaintiff lacked any justifiable reliance concerning the supposed misstatements attributed to these
12 Answering Defendants.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 *(Set-Off to Recovery)*

15 18. As a eighteenth and separate affirmative defense to each cause of action asserted
16 against them, these Answering Defendants are informed and believe, and thereon allege, that they
17 are entitled to a set-off as a result of any recovery made by Plaintiff from any other party, in
18 connection with the damages claimed in this lawsuit.

19 **NINETEENTH AFFIRMATIVE DEFENSE**

20 *(Damages Did Not Arise From Defendant's Alleged Breach)*

21 19. As a nineteenth separate affirmative defense to each cause of action asserted against
22 them, these Answering Defendants are informed and believe, and thereon allege, that as to each
23 alleged cause of action set forth in the FAC, the conditions set forth therein and the damages related
24 thereto did not arise out of any action by these Answering Defendants nor any act or omission
25 related thereto and thus recovery is precluded.

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1 **David A. Glazer v. Cheney Adrienne Shapiro, et al.**

2 LASC Case No.: BC669741

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